

REMARKS

The Final Examiner's Action mailed on November 13, 2003 has been given careful consideration by the applicants. Claims 1-48 remain in the application.

The Office Action

The Examiner maintained his objection to the Information Disclosure Statement.

Claims 1-48 were rejected under 35 U.S.C. §102(b) in view of a "letter to customers" signed by David Dineff on November 15, 2000.

Claims 1, 2, 4-15 and 39-48 were rejected under 35 U.S.C. §102(a) as being anticipated by publication no. WO 01/65204 A1.

Claims 3 and 16-38 were rejected under 35 U.S.C. §103 as being unpatentable over document no. WO 01/65204 A1 in view of U.S. Patent No. 4,510,389 to Fumoto.

The Information Disclosure Statement

The Examiner's comments with respect to his objection to the Information Disclosure Statement are noted. However, the Examiner misinterprets the situation. As such, and in view of the following comments, the Examiner is respectfully requested to reconsider his objection to the Information Disclosure Statement and his accompanying comments.

More specifically, the assignee of the present invention is Pressco Technology, Inc. Pressco is not AGR TopWave. This is a fundamental misunderstanding on the part of the Examiner and apparently is at the root of the Examiner's concerns.

With respect to AGR TopWave publications and patents, the applicants submitted material that was available to them at the time of filing and thereafter. Again, Pressco is not AGR TopWave. As such, the statement of AGR TopWave (in the November 15, 2000 open letter) that its technology is patented is not an issue that Pressco has any practical manner of verifying or not verifying. The applicants understood the Examiner's comments in the previous action to require Pressco to search for and verify AGR TopWave's claim that its technology is patented technology. To applicants' knowledge, this is not a requirement of the U.S. patent laws. Presumably, since the Examiner was under the impression that Pressco and AGR TopWave are the same company, the Examiner was of the view that Pressco should have had knowledge of that material. However, this point should now be moot in view of the clarification that Pressco is not AGR TopWave. Again, Pressco submitted the

relevant (even if only remotely relevant) material available to it in the three (3) Information Disclosure Statements filed on February 12, 2002, April 1, 2003 and September 15, 2003.

The Examiner apparently misunderstood the applicants' statements on other issues in the previous response. In this regard, the applicants are not withholding information. They simply do not have answers to the questions raised by the Examiner.

The Claims Distinguish Over the Cited Art and Overcome the Rejections

Claims 1-48 were rejected under 35 U.S.C. §102 based upon a public use or sale as evidenced by a letter of AGR TopWave. However, the Examiner's assumption that AGR TopWave is the assignee of the present invention and that the November 15, 2000 letter evidences a public use or sale of the applicants' invention are incorrect. Therefore, the rejection should be withdrawn.

Notwithstanding that (and notwithstanding the misunderstood facts regarding the Information Disclosure Statement), the AGR TopWave technology at issue is different than the claimed invention. Specifically, the claimed invention relates to the process of supplying infrared or ultraviolet energy to an article, e.g., a plastic bottle, wherein at least a portion of an emitted wavelength spectrum is partially absorbed by the article to produce an absorption-based signal representing an amount of absorption occurring at all of the plurality of points within a selected region of the article. The present invention does not measure thickness of the bottle, as is disclosed in the AGR TopWave literature.

Indeed, the present invention does not use thickness as a parameter in any manner. This has technical advantages in application because many plastic bottles have varying thicknesses, non-uniform configurations, and varying shapes. To measure the thickness of the walls in such bottles can be difficult and, in some cases, irrelevant to any meaningful analysis. Accordingly, the applicants' system of measuring the mass of material in regions of the article being inspected, avoid these unpredictable thickness measurements. Therefore, the claims patentably distinguish over the cited technology.

Claims 1, 2, 4-15 and 39-48 were rejected under 35 U.S.C. §102 as being anticipated by document no. WO 01/65204 A1. However, the technology disclosed in that document is thickness measurement technology. As above, the present claimed

invention does not utilize thickness measurement. Therefore, the claims patentably distinguish thereover.

Claims 3 and 16-38 were rejected under 35 U.S.C. §103 as being unpatentable over document no. WO 01/65204 A1 in view of Fumoto. The applicants do not concede the Examiner's assertions regarding obviousness and official notice. However, even if the Examiner's assertions are supportable, the citation to Fumoto does not cure the deficiencies of the document no. WO 01/65204 A1, as noted above. Therefore, these claims are not rendered obvious by the suggested combination.

CONCLUSION

In view of the foregoing, the applicants respectfully submit that all claims are now in condition for allowance. Early notification of such allowance is hereby respectfully requested.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP

April 8, 2004
Date

Joseph D. Dreher
Joseph D. Dreher
Reg. No. 37,123
1100 Superior Avenue
7th Floor
Cleveland, Ohio 44114-2579
(216) 861-5582

Certificate of Mailing

Under 37 C.F.R. § 1.8, I certify that this Amendment is being

- ☐ deposited with the United States Postal Service as First Class mail, addressed to: MAIL STOP AMENDMENT FEE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.
- ☐ transmitted via facsimile in accordance with 37 C.F.R. § 1.8 on the date indicated below.
- ☒ deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated below and is addressed to: MAIL STOP AF, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Express Mail Label No.: EL 964453462 US
Date <u>April 8, 2004</u>

Signature <u>Roseanne Giuliani</u>
Printed Name Roseanne Giuliani

N:\PSSZ\200073\US\RLG0002920V001.doc